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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,678	09/19/2003	Toshie Imai	MIPEP057	6257
25920 7590 06/26/2008 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
EXAMINER				
SAUNDERS, PAUL				
ART UNIT		PAPER NUMBER		
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06/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/665,678

Applicant(s)

IMAI, TOSHIE

Examiner

PAUL SAUNDERS

Art Unit

2622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/24/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) 4-10, 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 11, 12, 14, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of election in the reply filed on 3/24/2008 is acknowledged. The traversal is on the ground(s) that 37 CFR 1.146 allows issuance of an election of species requirement in the first action on an application only.

This is not found persuasive because 37 CFR 1.146 states:

In the first action on an application containing a generic claim to a generic invention(genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

Examiner respectfully submits that 37 CFR 1.146 does not explicitly state that a requirement for election may only be issued in a first action. The requirement is still deemed proper.

The Applicant is reminded that upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/17/2008 and 6/16/08 was filed after the mailing date of the Office Action on 7/19/2007. The submission is in

compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Arguments

3. Applicant's arguments, filed 10/19/2007, with respect to the rejection(s) of claim(s) 1,11-12,22-23 and their dependants have been fully considered. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made. The Examiner thanks the Applicant for the timely responses filed 10/19/2007, 03/24/2008, and further for the helpful IDS which has been received as stated above.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1,3,11,12,14,22** rejected under 35 U.S.C. 102(b) as being anticipated by

i. Yamaguchi (US 6,023,524 A).

Regarding **claim 1**, Yamaguchi discloses an image processing device (fig. 1, Abstract) for processing an image using image data generated by an image generating device (col. 10 lines 1-27), and image generation record information that is associated with the image data (col. 9 lines 7-8 – photographing information) and that includes

operation information of the image generating device at the time that the image data is generated (col. 4 line 39-col. 5 line 5, col. 8 line 39, col. 9 lines 13-18, col. 9 line 66-col. 10 line 8), the image processing device comprising: a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing (fig. 2, 6, 16, 17, col. 20 line 60-col. 23 line 31), based on both the image generation record information and the image data (image generation record information being most of the photographing information, and image data being the RGB values for each pixel included in the extracted effective region), wherein when the image generation record information includes subject position information indicating a position of a subject in the image, the judging section uses the subject position information in executing the backlight decision (col. 16 lines 39-53 – the effective region is based on the positional information when included in the photographing information); and an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (fig. 12, col. 2 line 63-col. 3 line 42, col. 6 lines 61-65, col. 7 lines 16-36, col. 23 line 32-col. 24 line 63 – at least some pixels being the effective region being a human face).

Regarding **claim 3**, Yamaguchi discloses an image processing device according to claim 1, wherein the judging section analyses the image data with a weight distribution that has different magnitudes at the subject position (the effective region having approximately weight 1) and other positions (the non effective region or main

regions having approximately weight 0), and execute the backlight decision according to the analysis result (col. 16 lines 47-53, col. 22 line 39-col. 23 line 21).

Regarding **claim 11**, Yamaguchi discloses (refer to the rejection of claim 1) an image output device (fig. 1, 12) for outputting an image using image data generated by an image generating device, and image generation record information that is associated with the image data and that includes operation information of the image generating device at the time that the image data is generated, the image output device comprises: a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data, wherein when the image generation record information includes subject position information indicating a position of a subject in the image, the backlight decision is made using the subject position information; an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data; and an output section for outputting an image according to the image quality-adjusted image data (col. 6 lines 61-65, col. 24 lines 44-63).

Regarding **claim 12**, Yamaguchi discloses (refer to the rejection of claim 1) a method of processing an image using image data generated by an image generating device, and image generation record information that is associated with the image data and that includes operation information of the image generating device at the time that

the image data is generated, the method comprising the steps of: (a) executing a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data, wherein when the image generation record information includes subject position information indicating a position of a subject in the image, the backlight decision is made using the subject position information; and (b) when it is decided to execute the backlight adjustment processing, executing backlight adjustment processing to increase brightness value of at least some pixels in the image data.

Regarding **claim 14**, Yamaguchi discloses (refer to the rejection of claim 3) a method according to claim 12, wherein the step (a) includes analyzing the image data with a weight distribution that has different magnitudes at the subject position and other positions, and executing the backlight decision according to the analysis result.

Regarding **claim 22**, Yamaguchi discloses (refer to the rejection of claim 12) a method of outputting an image using image data generated by an image generating device, and image generation record information that is associated with the image data and that includes operation information of the image generating device at the time that the image data is generated, the method comprising the steps of: (a) executing a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data, wherein when the image generation record information includes subject position information

indicating a position of a subject in the image, the backlight decision is made using the subject position information; (b) when it is decided to execute the backlight adjustment processing, executing backlight adjustment processing to increase brightness value of at least some pixels in the image data; and (c) outputting an image according to the image quality-adjusted image data.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. **Claim 23** rejected under 35 U.S.C. 103(a) as being unpatentable over
 - ii. Yamaguchi (US 6,023,524 A) in view of
 - iii. Official Notice.

Regarding **claim 23**, Yamaguchi discloses (refer to the rejection of claim 22) a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data, wherein when the image generation record information includes subject position information indicating a position of a subject in the image, the backlight decision is made using the subject position information; and when it is decided to execute the backlight adjustment processing, causing the computer to execute backlight adjustment processing to increase brightness value of at least some pixels in the image data.

Yamaguchi does not expressly disclose a computer-readable storage medium encoded with a computer program, the computer program comprising: a first program causing a computer to execute and a second program as claimed.

Official Notice is taken by the Examiner that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the correction method taught by Yamaguchi to further be embodied as a computer program in order to provide an effective means to further enhance and implement the method of outing image as claimed

Conclusion

8. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

Stavely (US 7,262,798 B2) teaches brightness adjustment based on distance regions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL SAUNDERS whose telephone number is (571)270-3319. The examiner can normally be reached on Mon-Thur 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NgocYen Vu can be reached on 571.272.7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PS/
6/11/2008

***/Ngoc-Yen T. VU/
Supervisory Patent Examiner, Art Unit 2622***